

**FORTY-EIGHTH LEGISLATURE
FIRST SESSION, 2007**

HB 436/a

March 14, 2007

Madam President:

Your **FINANCE COMMITTEE**, to whom has been referred

HOUSE BILL 436, as amended

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 1, line 15, before "RECONCILING", insert "INCREASING THE MINIMUM ASSESSMENT AMOUNT; INCREASING THE CAP ON A PENALTY IMPOSED FOR FAILURE TO PAY A TAX OR TO FILE A RETURN; CHANGING THE RATE OF INTEREST PAID ON AN UNDERPAYMENT OR OVERPAYMENT OF A TAX; LIMITING THE RIGHT TO INTEREST ON REFUNDS OF CERTAIN TAXES TO REFUNDS THAT ARE MADE MORE THAN ONE HUNDRED TWENTY DAYS AFTER THE CLAIM FOR REFUND IS MADE; ELIMINATING THE PENALTY FOR INCORRECT REPORTING OF THE FOOD OR HEALTH CARE PRACTITIONER SERVICES DEDUCTION; PROVIDING A CREDIT FOR CERTAIN PENALTIES; IMPOSING A PENALTY FOR FAILURE TO FILE INFORMATION RETURNS PURSUANT TO THE GASOLINE TAX ACT OR SPECIAL FUELS SUPPLIER TAX ACT; EXPANDING THE INCOME TAX EXEMPTION FOR LOW- AND MIDDLE-INCOME TAXPAYERS; INCREASING THE MAXIMUM INCOME AT WHICH THE EXEMPTION CAN BE CLAIMED; CREATING AN INCOME TAX CREDIT FOR ADOPTION OF SPECIAL NEEDS CHILDREN; PROVIDING A STATE INCOME TAX EXEMPTION FOR SALARIES PAID BY THE UNITED STATES FOR ACTIVE DUTY SERVICE IN THE ARMED FORCES OF THE UNITED STATES; PERMITTING A DEDUCTION FROM GROSS RECEIPTS FOR SALES OF CONSTRUCTION MATERIAL AND METALLIFEROUS MINERAL ORE TO CERTAIN TAX-EXEMPT ORGANIZATIONS THAT ARE ORGANIZED FOR THE PURPOSE OF PROVIDING HOME OWNERSHIP OPPORTUNITIES TO LOW-INCOME FAMILIES; PROVIDING AN EXEMPTION FROM GROSS RECEIPTS TAXES FOR THE GROSS RECEIPTS OF SALES OF GOODS BY A DISABLED STREET VENDOR;".

2. On page 1, line 16, before the period insert "; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978".

3. On page 1, between lines 18 and 19, insert the following new sections:

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"Section 1. Section 7-1-17 NMSA 1978 (being Laws 1965, Chapter 248, Section 20, as amended) is amended to read:

"7-1-17. ASSESSMENT OF TAX--PRESUMPTION OF CORRECTNESS.--

A. If the secretary or the secretary's delegate determines that a taxpayer is liable for taxes in excess of [~~ten dollars~~ ~~(\$10.00)~~] twenty-five dollars (\$25.00) that are due and that have not been previously assessed to the taxpayer, the secretary or the secretary's delegate shall promptly assess the amount thereof to the taxpayer.

B. Assessments of tax are effective:

(1) when a return of a taxpayer is received by the department showing a liability for taxes;

(2) when a document denominated "notice of assessment of taxes", issued in the name of the secretary, is mailed or delivered in person to the taxpayer against whom the liability for tax is asserted, stating the nature and amount of the taxes assertedly owed by the taxpayer to the state, demanding of the taxpayer the immediate payment of the taxes and briefly informing the taxpayer of the remedies available to the taxpayer; or

(3) when an effective jeopardy assessment is made as provided in the Tax Administration Act.

C. Any assessment of taxes or demand for payment made by the department is presumed to be correct.

D. When taxes have been assessed to any taxpayer and remain unpaid, the secretary or the secretary's delegate may demand payment at any time except as provided otherwise by Section 7-1-19 NMSA 1978."

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Section 2. Section 7-1-67 NMSA 1978 (being Laws 1965, Chapter 248, Section 68, as amended) is amended to read:

"7-1-67. INTEREST ON DEFICIENCIES.--

A. If a tax imposed is not paid on or before the day on which it becomes due, interest shall be paid to the state on that amount from the first day following the day on which the tax becomes due, without regard to any extension of time or installment agreement, until it is paid, except that:

(1) for income tax imposed on a member of the armed services of the United States serving in a combat zone under orders of the president of the United States, interest shall accrue only for the period beginning the day after any applicable extended due date if the tax is not paid;

(2) if the amount of interest due at the time payment is made is less than one dollar (\$1.00), then no interest shall be due;

(3) if demand is made for payment of a tax, including accrued interest, and if the tax is paid within ten days after the date of the demand, no interest on the amount paid shall be imposed for the period after the date of the demand;

(4) if a managed audit is completed by the taxpayer on or before the date required, as provided in the agreement for the managed audit, and payment of any tax found to be due is made in full within thirty days of the date the secretary has mailed or delivered an assessment for the tax to the taxpayer, no interest shall be due on the assessed tax;

(5) when, as the result of an audit or a managed audit, an overpayment of a tax is credited against an underpayment of tax pursuant to Section 7-1-29 NMSA 1978, interest shall accrue from the date the tax was due until the tax is deemed paid;

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(6) if the department does not issue an assessment for the tax program and period within the time provided in Subsection D of Section 7-1-11.2 NMSA 1978, interest shall be paid from the first day following the day on which the tax becomes due until the tax is paid, excluding the period between either:

(a) the one hundred eightieth day after giving a notice of outstanding records or books of account and the date of the assessment of the tax; or

(b) the ninetieth day after the expiration of the additional time requested by the taxpayer to comply, if such request was granted, and the date of the assessment of the tax; and

(7) if the taxpayer was not provided with proper notices as required in Section 7-1-11.2 NMSA 1978, interest shall be paid from the first day following the day on which the tax becomes due until the tax is paid, excluding the period between one hundred eighty days prior to the date of assessment and the date of assessment.

B. Interest due to the state under Subsection A or D of this section shall be at the rate [~~of fifteen percent a year~~] established for individuals pursuant to Section 6621 of the Internal Revenue Code, computed on a daily basis; provided that if a different rate is specified by a compact or other interstate agreement to which New Mexico is a party, that rate shall be applied to amounts due under the compact or other agreement.

C. Nothing in this section shall be construed to impose interest on interest or interest on the amount of any penalty.

D. If any tax required to be paid in accordance with Section 7-1-13.1 NMSA 1978 is not paid in the manner required by that section, interest shall be paid to the state on the amount required to be paid in accordance with Section 7-1-13.1 NMSA 1978. If interest is due under this subsection and is also due under

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Subsection A of this section, interest shall be due and collected only pursuant to Subsection A of this section."

Section 3. Section 7-1-68 NMSA 1978 (being Laws 1965, Chapter 248, Section 69, as amended by Laws 2003, Chapter 2, Section 1 and by Laws 2003, Chapter 439, Section 6) is amended to read:

"7-1-68. INTEREST ON OVERPAYMENTS.--

A. As provided in this section, interest shall be allowed and paid on the amount of tax overpaid by a person that is subsequently refunded or credited to that person.

B. Interest on overpayments of tax shall accrue and be paid at the rate [~~of fifteen percent a year~~] established for individuals pursuant to Section 6621 of the Internal Revenue Code, computed on a daily basis; provided that if a different rate is specified by a compact or other interstate agreement to which New Mexico is a party, that rate shall apply to amounts due under the compact or other agreement.

C. Unless otherwise provided by this section, interest on an overpayment not arising from an assessment by the department shall be paid from the date of the claim for refund until a date preceding by not more than thirty days the date of the credit or refund to any person; interest on an overpayment arising from an assessment by the department shall be paid from the date of overpayment until a date preceding by not more than thirty days the date of the credit or refund to any person.

D. No interest shall be allowed or paid with respect to an amount credited or refunded if:

(1) the amount of interest due is less than one dollar (\$1.00);

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(2) the credit or refund is made within:

(a) fifty-five days of the date of the claim for refund of income tax, pursuant to either the Income Tax Act or the Corporate Income and Franchise Tax Act for the tax year immediately preceding the tax year in which the claim is made; ~~[or]~~

(b) seventy-five days of the date of the claim for refund of gasoline tax to users of gasoline off the highways; or

(c) one hundred twenty days of the date of the claim for refund of tax imposed pursuant to the Resources Excise Tax Act, the Severance Tax Act, the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act;

(3) the credit or refund is made within one hundred twenty days of the date of the claim for refund of income tax, pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act, for any tax year more than one year prior to the year in which the claim is made;

(4) Sections 6611(f) and 6611(g) of the Internal Revenue Code, as those sections may be amended or renumbered, prohibit payment of interest for federal income tax purposes;

(5) the credit or refund is made within sixty days of the date of the claim for refund of any tax other than income tax; ~~[or]~~

(6) the credit results from overpayments found in an audit of multiple reporting periods and applied to underpayments found in that audit or refunded as a net overpayment to the taxpayer pursuant to Section 7-1-29 NMSA 1978;

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(7) the department applies the credit or refund to an intercept program, to the taxpayer's estimated payment prior to the due date for the estimated payment or to offset prior liabilities of the taxpayer pursuant to Subsection E of Section 7-1-29 NMSA 1978; or

(8) the credit or refund results from overpayments the department finds pursuant to Subsection F of Section 7-1-29 NMSA 1978 that exceed the refund claimed by the taxpayer on the return.

E. Nothing in this section shall be construed to require the payment of interest upon interest."

Section 4. Section 7-1-69 NMSA 1978 (being Laws 1965, Chapter 248, Section 70, as amended) is amended to read:

"7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A RETURN.--

A. Except as provided in Subsection C of this section, in the case of failure due to negligence or disregard of department rules and regulations, but without intent to evade or defeat a tax, to pay when due the amount of tax required to be paid, to pay in accordance with the provisions of Section 7-1-13.1 NMSA 1978 when required to do so or to file by the date required a return regardless of whether a tax is due, there shall be added to the amount assessed a penalty in an amount equal to the greater of:

(1) two percent per month or any fraction of a month from the date the tax was due multiplied by the amount of tax due but not paid, not to exceed [~~ten~~] twenty percent of the tax due but not paid;

(2) two percent per month or any fraction of a month from the date the return was required to be filed multiplied by the tax liability established in the late return, not to exceed [~~ten~~] twenty percent of the tax liability established in the late return; or

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(3) a minimum of five dollars (\$5.00), but the five-dollar (\$5.00) minimum penalty shall not apply to taxes levied under the Income Tax Act or taxes administered by the department pursuant to Subsection B of Section 7-1-2 NMSA 1978.

B. No penalty shall be assessed against a taxpayer if the failure to pay an amount of tax when due results from a mistake of law made in good faith and on reasonable grounds.

C. If a different penalty is specified in a compact or other interstate agreement to which New Mexico is a party, the penalty provided in the compact or other interstate agreement shall be applied to amounts due under the compact or other interstate agreement at the rate and in the manner prescribed by the compact or other interstate agreement.

D. In the case of failure, with willful intent to evade or defeat a tax, to pay when due the amount of tax required to be paid, there shall be added to the amount fifty percent of the tax or a minimum of twenty-five dollars (\$25.00), whichever is greater, as penalty.

E. If demand is made for payment of a tax, including penalty imposed pursuant to this section, and if the tax is paid within ten days after the date of such demand, no penalty shall be imposed for the period after the date of the demand with respect to the amount paid.

F. If a taxpayer makes electronic payment of a tax but the payment does not include all of the information required by the department pursuant to the provisions of Section 7-1-13.1 NMSA 1978 and if the department does not receive the required information within five business days from the later of the date a request by the department for that information is received by the taxpayer or the due date, the taxpayer shall be subject to a penalty of two percent per month or any fraction of a month from the fifth day following the date the request is received. If a penalty is imposed

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under Subsection A of this section with respect to the same transaction for the same period, no penalty shall be imposed under this subsection.

G. No penalty shall be imposed on:

(1) tax due in excess of tax paid in accordance with an approved estimated basis pursuant to Section 7-1-10 NMSA 1978;

(2) tax due as the result of a managed audit; or

(3) tax that is deemed paid by crediting overpayments found in an audit or managed audit of multiple periods pursuant to Section 7-1-29 NMSA 1978."

Section 5. Section 7-1-69.1 NMSA 1978 (being Laws 2005, Chapter 109, Section 1) is amended to read:

"7-1-69.1. CIVIL PENALTY FOR FAILURE TO FILE AN INFORMATION RETURN.--A taxpayer, wholesaler, retailer or rack operator who fails to file an information return on time pursuant to the Gasoline Tax Act or the Special Fuels Supplier Tax Act shall pay a penalty of fifty dollars (\$50.00) for each late report. This penalty shall be in addition to other applicable penalties."

Section 6. A new section of Chapter 7 NMSA 1978 is enacted to read:

"[NEW MATERIAL] CREDIT FOR PENALTY PURSUANT TO SECTION 7-1-71.2 NMSA 1978.--

A. A taxpayer who paid a penalty pursuant to the provisions of Section 7-1-71.2 NMSA 1978 in effect prior to July 1, 2007 may claim a credit for the amount of the penalty.

B. To claim the credit provided in Subsection A of this section, the taxpayer shall apply to the taxation and revenue

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department prior to July 1, 2010, on forms and in the manner prescribed by the department, and shall supply documentation as required by the department.

C. The amount of credit provided in Subsection A of this section may be claimed against the taxpayer's gross receipts tax, compensating tax and withholding tax due in a reporting period. Any amount of available credit that exceeds the taxpayer's gross receipts tax, compensating tax and withholding tax due for a reporting period may be claimed in subsequent reporting periods, for a period of three years."".

4. Renumber the succeeding sections accordingly.

5. On page 14, between lines 8 and 9, insert the following new section:

"Section 8. Section 7-2-5.8 NMSA 1978 (being Laws 2005, Chapter 104, Section 5) is amended to read:

"7-2-5.8. EXEMPTION FOR LOW- AND MIDDLE-INCOME TAXPAYERS.--

A. An individual may claim an exemption in an amount specified in Subsections B through D of this section not to exceed an amount equal to the number of federal exemptions multiplied by two thousand five hundred dollars (\$2,500) of income includable, except for this exemption, in net income. [~~Individuals having income both within and without this state shall apportion this exemption in accordance with regulations of the secretary.~~]

B. For a married individual filing a separate return with adjusted gross income up to [~~twenty thousand three hundred thirty-three dollars (\$20,333)~~] twenty-seven thousand five hundred dollars (\$27,500):

(1) if the adjusted gross income is not over [~~twelve thousand dollars (\$12,000)~~] fifteen thousand dollars

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(\$15,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars (\$2,500) for each federal exemption; and

(2) if the adjusted gross income is over [~~twelve thousand dollars (\$12,000)~~] fifteen thousand dollars (\$15,000) but not over [~~twenty thousand three hundred thirty-three dollars (\$20,333)~~] twenty-seven thousand five hundred dollars (\$27,500), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars
(\$2,500); less

(b) twenty percent of the amount obtained by subtracting [~~twelve thousand dollars (\$12,000)~~] fifteen thousand dollars (\$15,000) from the adjusted gross income.

C. For single individuals with adjusted gross income up to [~~twenty-seven thousand one hundred ten dollars (\$27,110)~~] thirty-six thousand six hundred sixty-seven dollars (\$36,667):

(1) if the adjusted gross income is not over [~~sixteen thousand dollars (\$16,000)~~] twenty thousand dollars (\$20,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars (\$2,500) for each federal exemption; and

(2) if the adjusted gross income is over [~~sixteen thousand dollars (\$16,000)~~] twenty thousand dollars (\$20,000) but not over [~~twenty-seven thousand one hundred ten dollars (\$27,110)~~] thirty-six thousand six hundred sixty-seven dollars (\$36,667), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars
(\$2,500); less

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(b) fifteen percent of the amount obtained by subtracting [~~sixteen thousand dollars (\$16,000)~~] twenty thousand dollars (\$20,000) from the adjusted gross income.

D. For married individuals filing joint returns, surviving spouses or for heads of households with adjusted gross income up to [~~forty thousand six hundred sixty-seven dollars (\$40,667)~~] fifty-five thousand dollars (\$55,000):

(1) if the adjusted gross income is not over [~~twenty-four thousand dollars (\$24,000)~~] thirty thousand dollars (\$30,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars (\$2,500) for each federal exemption; and

(2) if the adjusted gross income is over [~~twenty-four thousand dollars (\$24,000)~~] thirty thousand dollars (\$30,000) but not over [~~forty thousand six hundred sixty-seven dollars (\$40,667)~~] fifty-five thousand dollars (\$55,000), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars (\$2,500); less

(b) ten percent of the amount obtained by subtracting [~~twenty-four thousand dollars (\$24,000)~~] thirty thousand dollars (\$30,000) from the adjusted gross income.

[~~E. For the purposes of this section, "federal exemption" means an exemption allowable for federal income tax purposes for an individual included in the return who is domiciled in New Mexico.~~]"

6. Renumber the succeeding sections accordingly.

7. On page 15, between lines 4 and 5, insert the following

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new sections:

"Section 10. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] CREDIT--SPECIAL NEEDS ADOPTED CHILD TAX
CREDIT--CREATED--QUALIFICATIONS--DURATION OF CREDIT.--

A. A taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual and who adopts a special needs child on or after January 1, 2007 or has adopted a special needs child prior to January 1, 2007, may claim a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act. The credit authorized pursuant to this section may be referred to as the "special needs adopted child tax credit".

B. A taxpayer may claim and the department may allow a special needs adopted child tax credit in the amount of one thousand dollars (\$1,000) to be claimed against the taxpayer's tax liability for the taxable year imposed pursuant to the Income Tax Act.

C. A taxpayer may claim a special needs adopted child tax credit for each year that the child may be claimed as a dependent for federal taxation purposes by the taxpayer.

D. If the amount of the special needs adopted child tax credit due to the taxpayer exceeds the taxpayer's individual income tax liability, the excess shall be refunded.

E. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the special needs adopted child tax credit provided in this section that would have been allowed on a joint return.

F. As used in this section, "special needs adopted child" means an individual who may be over eighteen years of age and

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who is certified by the children, youth and families department or a licensed child placement agency as meeting the definition of a "difficult to place child" pursuant to the Adoption Act; provided, however, if the classification as a "difficult to place child" is based on a physical or mental impairment or an emotional disturbance the physical or mental impairment or emotional disturbance shall be at least moderately disabling."

Section 11. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] EXEMPTION--ARMED FORCES SALARIES.--A salary paid by the United States to a taxpayer for active duty service in the armed forces of the United States is exempt from state income taxation."

Section 12. Section 7-9-60 NMSA 1978 (being Laws 1970, Chapter 12, Section 4, as amended) is amended to read:

"7-9-60. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--SALES TO CERTAIN ORGANIZATIONS.--

A. Except as provided otherwise in Subsection B of this section, receipts from selling tangible personal property to 501(c)(3) organizations [~~that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered~~] may be deducted from gross receipts or from governmental gross receipts if the sale is made to an organization that delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate shall employ the tangible personal property in the conduct of functions described in Section 501(c)(3) and shall not employ the tangible personal property in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1986, as amended or renumbered.

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B. The deduction provided by this section does not apply to receipts from selling construction material or from selling metalliferous mineral ore; except that receipts from selling construction material or from selling metalliferous mineral ore to a 501(c)(3) organization that is organized for the purpose of providing homeownership opportunities to low-income families may be deducted from gross receipts. Receipts may be deducted under this subsection only if the buyer delivers a nontaxable transaction certificate to the seller. The buyer shall use the property in the conduct of functions described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not employ the tangible personal property in the conduct of an unrelated trade or business as defined in Section 513 of that code.

C. For the purposes of this section, "501(c)(3) organization" means an organization that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered."

Section 13. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"[NEW MATERIAL] EXEMPTION--RECEIPTS FROM SALES BY DISABLED STREET VENDORS.--

A. Exempt from payment of the gross receipts tax are receipts from the sale of goods by a disabled street vendor.

B. As used in this section:

(1) "disabled" means to be blind or permanently disabled with medical improvement not expected pursuant to 42 USCA 421 for purposes of the federal Social Security Act or to have a permanent total disability pursuant to the Workers' Compensation Act; and

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(2) "street vendor" means a person licensed by a local government to sell items of tangible personal property by newly setting up a sales site daily or selling the items from a moveable cart, tray, blanket or other device."".

8. Renumber the succeeding section accordingly.

9. On page 15, strike lines 5 and 6 in their entirety and insert in lieu thereof the following sections:

"Section 15. REPEAL.--

A. Section 7-2-5.4 NMSA 1978 (being Laws 1988, Chapter 59, Section 1, as amended) is repealed. This repeal is applicable to tax years beginning on or after January 1, 2007.

B. Section 7-1-71.2 NMSA 1978 (being Laws 2004, Chapter 116, Section 3) is repealed effective July 1, 2007.

Section 16. APPLICABILITY.--The provisions of Sections 7 through 11 of this act apply to taxable years beginning on or after January 1, 2007.

Section 17. EFFECTIVE DATE.--

A. The effective date of Sections 1 through 5 of this act is January 1, 2008.

B. The effective date of Sections 6, 12 and 13 of this act is July 1, 2007.".

10. Renumber all sections to conform to these amendments.

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Respectfully submitted,

John Arthur Smith, Co-Chair
Timothy Z. Jennings, Co-Chair

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

No: 0

Excused: Rodriguez

Absent: None

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